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EXAMINER

GUILL, RUSSELL L

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



#### DETAILED ACTION

1. This Office Action is in response to an Amendment filed May 14, 2008. Claims 4 and 25 canceled. Claims 1, 3, 5, 7 - 24 and 26 - 28 are pending, and have been examined. Claims 1, 3, 5, 7 - 24 and 26 - 28 have been rejected.
2. The Examiner would like to thank the Applicant for the fully responsive and well prepared response, which was useful in the examination process. The Examiner appreciates the effort to carefully analyze the Office action, and make appropriate amendments.

#### *Response to Remarks*

3. Regarding objections to the drawings:
  - 3.1. The Examiner thanks the Applicant for the amendment to the specification, however, the amendment of paragraph 18 is objected to, as recited below.
4. Regarding claim 23 objected to for minor informalities:
  - 4.1. While the claim amendments overcome the objection, the amendments introduce a new rejection, as recited below.
5. Regarding claims 1, 9, 16 and 23 rejected under 35 USC § 112, second paragraph:
  - 5.1. Applicant's claim amendments overcome the rejection; however, the claim amendments introduce a new rejection, as recited below.
6. Regarding claims 1, 9, 16 and 23 rejected under 35 USC § 103:
  - 6.1. Applicant's arguments have been fully considered, and are persuasive.

#### *Specification*

7. The amendment filed May 14, 2008, is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Paragraph [0018] recites, "It should be understood that other Applications 152 may also

be run in VM 15". The specification appears to support that translated instructions of Applications 15 are run in the VM, but that the Applications 15 are not actually run in VM15.

8. Applicant is required to cancel the new matter in the reply to this Office Action, or recite support in the specification for the amendment.

*Claim Rejections - 35 USC § 112*

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**9.1.** Claims 1, 3, 5, 7 - 24 and 26 - 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**9.2.** Regarding claim 1, the claim recites in lines 5 - 6, "when the translated code references a memory access". It is unclear how translated code can reference a memory access. The phrase does not appear to describe a process that would be commonly understood by the ordinary artisan. The metes and bounds of the claim cannot be determined. Further, in order to prevent possible future issues under 35 USC § 112, first paragraph, the Examiner respectfully urges that any claim amendment be carefully reviewed to ensure support in the specification.

**9.3.** Regarding claim 9, the claim recites in lines 8 - 9, "when the translated code references a memory access". It is unclear how translated code can reference a memory access. The phrase does not appear to describe a process that would be commonly understood by the ordinary artisan. The metes and bounds of the claim cannot be determined. Further, in order to prevent possible future issues under 35 USC § 112, first paragraph, the Examiner respectfully urges that any claim amendment be carefully reviewed to ensure support in the specification.

**9.4.** Regarding claim 16, the claim recites in lines 9 - 10, "when the translated code references a memory access". It is unclear how translated code can reference a memory access. The phrase does not appear to describe a process that would be commonly understood by the ordinary artisan. The metes and bounds of the claim cannot be determined. Further, in order to prevent possible future issues under 35 USC § 112, first paragraph, the Examiner respectfully urges that any claim amendment be carefully reviewed to ensure support in the specification.

9.5. Regarding claim 23, the claim recites in line 8, “when the translated instructions references a memory access”. It is unclear how translated code can reference a memory access. The phrase does not appear to describe a process that would be commonly understood by the ordinary artisan. The metes and bounds of the claim cannot be determined. Further, in order to prevent possible future issues under 35 USC § 112, first paragraph, the Examiner respectfully urges that any claim amendment be carefully reviewed to ensure support in the specification.

9.6. Dependent claims inherit the defects of their parent claims.

### *Claim Rejections - 35 USC § 101*

10. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

11. Claims 23 – 24, 26 – 28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

11.1. Regarding claim 23, the claim appears to be directed to software running on a platform. The Applicant has argued on page 11 of Applicant’s argument, “In a claimed embodiment of the invention, the platform comprises a virtual machine monitor (VMM), a virtual machine (VM) to execute the translated code, and a host environment running a host OS and a full-platform simulator”. Thus, the platform appears to be entirely software. Therefore, the claim appears to be directed to a system that is entirely software. Software is at best, functional descriptive material per se, and thus is non-statutory. Further, the specification recites in paragraph [0015], “Both the host environment 101 and the direct execution environment 102 can be implemented entirely in software”. Further, the Applicant has argued on pages 11 – 12 of Applicant’s argument, “a host machine means the same thing as a host environment running a host operating system”. Thus, a host machine appears to be entirely software.

### *Allowable Subject Matter*

12. Any indication of allowability is withheld pending resolution of the outstanding rejections.

*Conclusion*

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
14. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russ Guill whose telephone number is 571-272-7955. The examiner can normally be reached on Monday – Friday 10:00 AM – 6:30 PM.
16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Rodriguez can be reached on 571-272-3753. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Any inquiry of a general nature or relating to the status of this application should be directed to the TC2100 Group Receptionist: 571-272-2100.
17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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